



City of Seattle

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Gregory J. Nickels, Mayor  
**Department of Design, Construction and Land Use**  
D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF DESIGN, CONSTRUCTION AND LAND USE**

**Application Number:** 2204351/2205896

**Applicant Name:** Sound Transit

**Address of Proposal:** Intersection of Martin Luther King Jr. Way South and South  
Trenton Street

**SUMMARY OF PROPOSED ACTION**

ECA Wetland Exception to fill 3,249 sq. ft. of “degraded” wetland, to restore 6,500 square feet of “degraded” wetland and a 50-foot vegetated buffer totaling approximately three-quarters of an acre at the City of Seattle Beer Sheva Park. This would allow construction of the preferred Sound Transit route light rail track and a regional bike trail.

The following approvals are required:

**SEPA** – to approve, condition or deny pursuant to 25.05.660 - Chapter 25.05, Seattle Municipal Code.

**Environmentally Critical Areas (ECA) Exception** - to allow the filling of 3,249 sq. ft. of a “degraded” wetland and the wetland buffer - Chapter 25.09, Seattle Municipal Code.

**SEPA DETERMINATION:**      ☐ Exempt   ☐ DNS   ☐ MDNS   ☒ EIS<sup>1</sup>

☐ DNS with conditions

☒ DNS involving non-exempt grading, or demolition, or  
   involving another agency with jurisdiction.<sup>1</sup>

<sup>1</sup> Sound Transit and the U.S. Department of Transportation Federal Transit Administration issued a Final combined NEPA and SEPA Environmental Impact Statement in November 1999; the Initial Segment between South Seattle and Sea-Tac was addressed in an Addendum issued November 16, 2001.

## **BACKGROUND DATA**

### **Site and Vicinity**

The site is located in south Seattle. It is bordered on the west by Martin Luther King (MLK) Jr. Way South, to the north by South Cloverdale Street and to the south by South Trenton Street. The triangular site measures approximately 220 feet along the northern border, 14.84 feet along the southern boundary, 685.26 feet along the western edge, and 631.15 feet along the eastern edge. There is a degraded palustrine emergent wetland in the southern portion of the site near the intersection of Martin Luther King (MLK) Jr. Way South and South Trenton Street. The site consists of a vacant grass field with the majority located within the powerline corridor.

The site and wetland are located within an existing Seattle City Light (SCL) power line right-of-way (ROW). The power line corridor slopes to the southeast and is approximately 8 feet below the surface of MLK Jr. Way at the location of the wetland. The degraded wetland is in an isolated depression at the southern end of the power line ROW. It is a 0.07-acre (3,249 square foot) palustrine emergent wetland that is seasonally flooded/saturated. City streets border the wetland to the south and to the east and a 3-foot-high rock retaining wall on the adjacent property forms the western boundary.

Sound Transit has submitted to DCLU a wetlands report by Parametrix Inc., dated April 2002, with a wetland delineation of 0.07 acres (3,249 square foot). DCLU, wetland planner met with Parametrix staff July 23, 2002, on site and confirmed the wetland delineation.

### **Proposal Description**

Sound Transit is proposing to construct and operate a light rail system known as the Central Link Light Rail Project. The proposed project will construct and operate an electric light rail system designed to connect several of the region's major activity centers: the City of Seattle, the City of Tukwila, the city of SeaTac, and Sea-Tac International Airport. The preferred alternative for the project would be a 20-mile light rail line connecting the University District, downtown Seattle, southeast Seattle, and the City of Tukwila. The light rail project is a component of Sound Move, Sound Transit's 10-year program for regional high-capacity transportation.

The proposed project will be constructed in segments. Construction of Segments A through C (University District to South McClellan Street) will not impact critical areas, but construction of Segment D will require filling a small (3,249 square foot) wetland (Wetland AR-3) near the intersection of Martin Luther King (MLK) Jr. Way South and South Trenton Street in south Seattle. The wetland is located within an existing Seattle City Light (SCL) power line right-of-way (ROW) adjacent to the proposed light rail route.

In this part of Segment D, the light rail tracks would be constructed at grade in a 93-foot-wide ROW. MLK Jr. Way South would be widened to provide four traffic lanes, and a sidewalk and landscaping improvements would be provided along the route. A 10-foot-wide regional bike rail would be constructed parallel to the proposed tracks within the SCL ROW on the west side of

MLK Jr. Way South. Because the ground surface is 8 feet below the street in this location, the bike trail will be constructed on fill, which will encroach into Wetland AR-3.

Construction of the proposed project will result in the loss of nearly the entire wetland area (3,249 square foot). Approximately 725 cubic yards of fill material will be placed in the wetland. However, the overall project will impact infiltration and water quality functions that the wetland currently performs. Construction of the proposed project will also displace urban wildlife that may use the wetland and its buffer as habitat.

Impacts to the wetland cannot be avoided under the preferred alternative for the Link Light Rail route. Sound Transit has attempted to minimize direct impacts to the wetland and its buffer. They considered building a retaining wall along the regional bike trail to minimize the fill footprint and reduce impacts to the wetland. However, there is a petroleum pipeline and anode bed within the SCL ROW which prevents the wall construction. Therefore, the preferred alternative will result in the loss of nearly the entire wetland. To compensate for this loss Sound Transit is proposing off site mitigation to replace the total wetland.

Sound Transit proposes to construct the preferred alternative for Central Link Light Rail Project. Not impacting the 3,249 square foot (0.07 acre) degraded wetland on the site would eliminate the preferred alternative for Central Link Light Rail Project, if no environmentally critical areas exception is granted. The proponent is applying for an exception to allow the filling of the degraded wetland, in exchange for the enhancement and restoration of 9,147 square feet (0.21 acres) of wetland located offsite (at a ratio of 2.8:1) at Beer Sheva Park. The proposed mitigation would include enhancement of 0.06 acres of wetland, the restoration of 0.15 acres of wetland which includes the removal of asphalt and boat ramp, and the restoration of the 50 foot buffer (7,462 square foot) including the removal of 6,642 square feet of asphalt road surface.

This would allow construction of the preferred alternative for Central Link Light Rail Project. The exception would result in the loss of the 3,249 square foot degraded wetland in exchange for the restoration and enhancement of 9,147 square feet of wetland at Beer Sheva Park, which has public access.

#### Public Comments

Pertaining to this wetland exception, three written comments were received during the comment period which ended on October 2, 2002. Two letters were in support of restoring the wetland but did not want public access. One letter was concerned about public safety if the turn around is modified people turning around might back into neighborhood kids playing in the area.

#### **ANALYSIS – ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

The applicant is seeking an environmentally critical areas exception to:

A) Fill and or impact 3,249 square feet of “degraded” wetland and its buffer.

An applicant for a critical areas exception must demonstrate, pursuant to SMC 25.09.300.A, that “no other applicable environmentally critical areas administrative remedies prescribed in Chapter 25.09 will provide sufficient relief...” Setback reduction would not be a realistic remedy in this case. In addition because of the powerlines overhead the area requires maintenance of vegetation within the ROW which limits restoration on site.

The proposal must comply with the wetland compensation requirement as described in SMC 25.09.160.A.2, which requires replacement at a ratio of two-to-one (2:1). The applicant has submitted a Compensatory Mitigation Plan that potentially complies with the compensation requirements and shows replacement of the original wetland at a ratio of two point eight -to-one (2.8:1).

The applicant has provided technical studies and other data (SMC 25.09.300.B.1). Sound Transit has provided a document entitled “Application to the City of Seattle Critical Areas Exception for Impacts to Wetland AR-3” dated July 2002 and prepared by Parametrix, Inc. This document includes the following: Joint Aquatic Resources Permit Application Form (JARPA), Application to the City of Seattle Critical Areas Exception for Impacts to Wetland AR-3, Scale Drawings, Wetland Delineation Report, and Draft Compensatory Mitigation Plan Impacts to Wetland AR-3 Link Light Rail, Segment D dated July 2002 pursuant to SMC 25.09.300.B. This report, additional information, and experience of the lead agency with review of similar projects form the basis for this analysis and decision.

*The applicant must provide an explanation with supporting evidence of how and why compliance with the unmodified environmentally critical areas development standards would not permit reasonable use of the property (SMC 25.09.300.B.2).*

The strict application of the code would not permit the light rail project is to be built along the preferred route. On site restoration is neither possible nor practical because of limitations at this site, including a Seattle City Light Overhead Powerline. Widening the existing road right-of-way (ROW) to allow for the light rail and bicycle trail will serve a regionally adopted plan for public transit and recreation. Compliance with the ECA is not possible on this site because there is not adequate space to construct the tracks and bike trail without filling or impacting the wetland.

Mitigation on site is not possible because of adequate space and the on going maintenance of vegetation under the powerlines would not allow for high quality wetlands. The off site mitigated wetland will provide a higher quality and function than the current on site wetland.

The Director is authorized to reduce, modify, or waive ECA standards in accordance with the following criteria.

- C. *The Director may modify an environmentally critical areas development standard when an applicant demonstrates to the Director’s satisfaction that strict application of the development standards would be unreasonable and that development undertaken pursuant to the modified standards would not cause significant injury to occupiers of the land, to other properties, and to public resources, or to the environment.*

Impacts to the wetland are unavoidable if the light rail project is to be built in accordance with the preferred route. This route was identified during the NEPA and SEPA process. Within the project area fill is required to build up the ROW which results in the impact to the wetland on site. Sound Transit investigated the option of using a wall to retain the fill and minimize impacts to the wetland. However, construction of the retaining wall could interfere with a buried anode bed for a pipeline located in the ROW. In addition, the retaining wall would still impact the wetland degrading it further.

The requested exception would not cause any injury to occupiers of the land, to other properties, to public resources, or to the environment. In fact, the requested exception will provide a benefit. The wetland that is proposed to be filled is not a wetland of “exceptional value” as defined in the Regulations for Environmentally Critical Areas (SMC 25.09). The wetland is categorized as “degraded” in that the wetland values have been biologically diminished by the invasion of non-native plants and maintenance of the vegetation by mowing under the powerlines. The existing wetland is small and degraded, and has low value for all wetland functions except for flood and stormwater control and base flow and groundwater support, for which it has moderate value. (Refer to the Parametrix report). All of these functions, including water quality maintenance, will be improved by the granting of the requested critical areas exception, because the wetland at Beer Sheva Park will be enhanced and restored. Granting the request will result in a loss of 3,249 sq. ft. of degraded wetland in exchange for the enhancement and restoration of 9,147 sq. ft. of scrub-shrub wetland, a replacement of the original wetland at a ratio of two point eight -to-one (2.8:1).

Since SMC 25.09.160.A.2.c.iii requires that restoration and creation take place before alteration of the original wetland; the Beer Sheva Park wetland will be enlarged and improved before any of the existing wetland is filled. There will be no injurious effects from a grant of the exception.

Strict application of the development standards in this case would not allow for the light rail line. This is due to the location of the wetland on site. The preferred alternative for the light rail line would not be possible without the granting of an exception. The proposal is reasonable in that it would allow for a regional transportation system that has been through the public process. Strict application of the development standards in this case would be unreasonable.

Any impacts associated with the project can be mitigated. The wetland restoration plan would allow for reasonable development of the light rail line while resulting in no net loss of wetlands.

D. *The relief granted by the reduction, waiver, or other modification of an environmentally critical area development shall be the minimum necessary to allow reasonable use of the property. In modifying a development standard, the Director may impose reasonable conditions that prevent or mitigate the same harm that the modified regulation was intended to prevent or mitigate.*

Relief granted to fill Wetland AR-3 25 ft. is necessary to allow reasonable use of the property if the light rail project is to be built along the adopted route. Widening the existing right of way to allow for the light rail tracks and bicycle trail will serve a regionally adopted plan for public transit and recreation. It is the adopted route along the linear corridor. The route has been

subject to extensive public discussion and both the NEAP the SEPA process. This process was used by the decision makers in reaching a final decision regarding the adopted route.

The proposal would result in a substantial wetland restoration and enhancement over the existing situation. The proposed route has been subject to extensive environmental review as part of the NEPA and SEPA process. In light of this, the wetland mitigation plan meets the criteria for an ECA exception.

As a condition of approval of this ECA exception, the applicant must submit a final wetland restoration plan, to the satisfaction of the Director.

### Conclusion

The approval of the ECA exception will allow Sound Transit to move forward with their preferred and adopted route for the light rail. The restoration and enhancement of the wetland located at Beer Sheva Park will result in an increase in wetland area at a ratio of 2.8:1, allow for the adopted route without harming the subject property or surrounding properties. Strict application of the development standards would be unreasonable. Other administrative remedies cannot be utilized, including setback variances, which would provide insufficient relief.

### **DECISION - ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

ECA Exception to impact and fill a portion of 3,249 sq. ft. of wetland is **CONDITIONALLY GRANTED**.

### **ANALYSIS - SEPA**

The environmental impacts have been analyzed in environmental documents prepared by Sound Transit: the "Central Link Project" was evaluated in a Final Environmental Impact Statement (FEIS) issued in November 1999. The construction of the light rail track along MLK Jr. Way South is identified in the plan under Segment D. The SEPA documents along with the *Application to the City of Seattle Critical Areas Exception for Impacts to Wetland AR-3* dated July 2002 and prepared by Parametrix, Inc. addressed environmental impacts. Therefore, all review required under the State Environmental Policy Act has been completed for this application.

The Department of Design, Construction and Land Use is reviewing the environmental impacts of the proposal in order to impose further conditions if necessary. This proposal is reviewed under substantive SEPA authority. Disclosure of the potential impacts from this proposal was made in the environmental documents listed above. This information, supplemental information provided by the applicant and the experience of this agency with review of similar proposals form the basis of this analysis and conditioning.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship among codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising

substantive SEPA authority. The Overview Policy states, in part, *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

#### Short-Term Impacts

The following temporary impacts are expected: 1) temporary soil erosion; 2) decreased air quality due to increased dust and other suspended air particulates during excavation; 3) increased noise and vibration from excavation operations and equipment; 4) increased traffic and parking demand from construction personnel; 5) conflict with normal pedestrian movement adjacent to the site; and 6) consumption of renewable and non-renewable resources. Further discussion of some of the issues is appropriate for conditioning.

In addition to the SEPA documents already issued for the project, City codes and/or ordinances also apply to the proposal and adequately address some of the identified impacts. Specifically, these codes and ordinances are 1) the Environmentally Critical Areas Code; 2) Building Code (construction measures in general); and 3) Stormwater, Drainage and Grading Code (temporary soil erosion). Compliance with these applicable codes and ordinances will adequately address these impacts.

#### Long-Term Impacts

No long-term or use-related impacts are anticipated as a result of this approval. The restoration and enhancement of the wetland located at Beer Sheva Park will result in an increase in wetland area enhancing the overall habitat at a ratio of 2.8:1.

### **CONDITIONS - ENVIRONMENTALLY CRITICAL AREAS EXCEPTION**

#### Prior to Issuance of the Master Use Permit

1. The applicant and/or responsible party shall submit to DCLU a final wetland mitigation and monitoring plan prepared by a qualified wetland professional. This plan is subject to approval by DCLU.

Signature: \_\_\_\_\_ (signature on file) Date: March 27, 2003  
Robert Knable, Wetland Scientist/Site Development Planner  
Department of Design, Construction and Land Use  
Land Use Division